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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,856	02/13/2004	Daniel A. Tepei	1988480	6136

22824 7590 11/29/2004

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EXAMINER

FULTON, CHRISTOPHER W

ART UNIT	PAPER NUMBER
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2859

DATE MAILED: 11/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/777,856	Applicant(s) TEPEI, DANIEL A.	
	Examiner Christopher W. Fulton	Art Unit 2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/13/04</u> . | 6) <input type="checkbox"/> Other: ____ |

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dempsey in view of Defenbaugh, Rigaumont, Roman, Polselli et al, and Kuechenmeister.

The device as claimed is substantially disclosed by Dempsey with a T-shaped body with a handle 36 on the head portion and a plurality of slots along the transverse portion of the T-shaped body to accommodate a marker, but lacks the top surface of the head portion and the transverse portion being along a single plane, indicia on the transverse portion adjacent the slots, a plurality of roller bearings in the contact edge of the head portion, the slots being notches exposed along an edge of the transverse portion of the body, the handle being U-shaped, and a groove along the edge of the transverse portion to accommodate the users fingers to aide in holding the device.

Defenbaugh teaches making the top surface of a head portion and transverse portion of a marking device in the same plane for a smooth marking plane along the edges of the device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the top surface of the head portion and the transverse portion being along a

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single plane in Dempsey as taught by Defenbaugh to make a smooth marking surface along the edges of the device.

Defenbaugh also teaches using indicia on the transverse portion adjacent notches to aide in locating the marking implement in the desired notch. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to place indicia on the transverse portion adjacent the slots in the device of the combination of Dempsey and Defenbaugh as further taught by Defenbaugh to better locate the marking implement in the desired slot.

Rigaumont teaches using roller bearings on the contact surfaces of a drafting device to aide in moving the device along the workpiece. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use roller bearings in the combination of Dempsey and Defenbaugh together as taught by Rigaumont to smooth the movement of the device along the workpiece.

Roman teaches using notches exposed along an edge of the transverse portion of the body to easily engage the marking implement from the open end of the notch. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to move the slots of the combination of Dempsey, Defenbaugh, and Rigaumont to the edge of the transverse arm of the body as taught by Roman to easily engage the marking implement from the open end of the notches.

Polselli et al teaches using a U-shaped handle to move a marking device which is easily grasped by the user. Therefore, it would have been obvious to one of ordinary skill in the art at

the time the invention was made to make the handle of the combination of Dempsey, Defenbaugh, Rigaumont, and Roman U-shaped as taught by Polselli et al to make the handle easily holdable by the user.

Kuechenmeister teaches using a groove 23 along the edge of a member to engage the fingers of the user to aide in holding the device during use of the device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a groove along the edge of the transverse member in the combination of Dempsey, Defenbaugh, Rigaumont, Roman, and Polselli et al as taught by Kuechenmeister to aide in holding the device during use of the device.

3. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dempsey, Defenbaugh, Rigaumont, Roman, Polselli et al, Kuechenmeister as applied to claim 1 above, and further in view of Granger.

The device as claimed is disclosed by the combination of Dempsey, Defenbaugh, Rigaumont, Roman, Polselli et al, and Kuechenmeister as stated in the rejection recited above for claim 1, but lacks the workpiece being marked specifically being drywall.

Granger teaches using a T-shaped marking device to mark drywall. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the device of the combination of Dempsey, Defenbaugh, Rigaumont, Roman, Polselli et al, and Kuechenmeister to mark drywall as taught by Granger to trim the drywall to the desired size.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rigaumont in view of Roman.

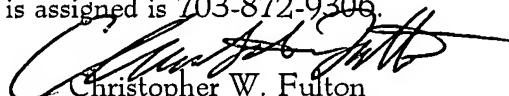
The device as claimed is substantially disclosed by Rigaumont a T-shaped body using roller bearings on the contact surfaces of a drafting device to aide in moving the device along the workpiece, but lacks slots along an edge of the transverse member to accommodate a marking implement.

Roman teaches using slots exposed along an edge of the transverse portion of the body to easily engage the marking implement from the open end of the slot to mark a workpiece. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add slot along the edge of the transverse member of the T-shaped body of Rigaumont as taught by Roman to engage a marking implement to mark a workpiece.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher W. Fulton whose telephone number is (571) 272-2242. The examiner can normally be reached on M-Th 5:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

CWF


Christopher W. Fulton
Primary Examiner
Art Unit 2859